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ABSTRACT

The Veterans' Educational Assistance Amendments of 1991 have the following purposes: (1) to restore educational assistance to service members and reservists who had received benefits for courses that they were unable to complete because they were called to active duty during the Persian Gulf War; (2) to extend the length of time Gulf War veterans could receive benefits by their length of active service plus 4 months; (3) to clarify Vietnam-era veterans' eligibility for federal employment preference based on disability; and (4) to extend employment assistance services for reservists called up in a war. This document records the text of the act as amended by and reported out of the Committee on Veterans' Affairs of the U.S. Senate. The document also includes an explanation of need for the legislation and an explanation of the bill by sections, a cost estimate for implementing the legislation, and a statement by D'Wayne Gray, Chief Benefits Director, Department of Veterans Affairs, about the department's position on the legislation. (KC)

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Calendar No. 188

102D CONGRESS
1st Session

SENATE

REPORT
102-124

VETERANS' EDUCATIONAL ASSISTANCE AMENDMENTS OF 1991

JULY 26 (legislatiwe day, JULY 8), 1991.—Ordered to be printed

Mr. CRANSTON, from the Committee on Veterans' Affairs, submitted the following

REPORT

[To accompany S. 868]

The Committee on Veterans' Affairs, to which was referred the bill (S. 868) to amend title 10, United States Code, and title 38, United States Code, to improve educational assistance benefits for members of the Selected Reserve of the Armed Forces who served on active duty during the Persian Gulf War, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute and an amendment to the title, and recommends that the bill, as amended, do pass.

COMMITTEE AMENDMENTS

The amendments are as follows:

Strike out all after the enacting clause as follows:

[SECTION 1. RESTORATION OF ENTITLEMENT TO EDUCATIONAL ASSISTANCE.

[(a) CHAPTER 30 PROGRAM.—Section 1413 of title 38, United States Code, is amended by adding at the end the following new subsection:

["(f)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in paragraph (2) shall not—

["(A) be charged against any entitlement of any individual under this chapter; or

["(B) be counted toward the aggregate period for which section 1795 of this title limits an individual's receipt of assistance.

["(2) Subject to paragraph (3), the payment of the educational assistance allowance referred to in paragraph (1) is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

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["(A) in the case of a member of the Selected Reserve, had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, or 673b, of title 10; or

["(B) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with such War, to a new duty location or assignment or to perform an increased amount of work; and

["(C) failed to receive credit or lost training time toward completion of the individual's approved education, professional, or vocational objective as a result of having to discontinue, as described in subparagraph (A) or (B), his or her course pursuit.

["(3) The period for which, by reason of this subjection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under paragraph (2)(C) of this subsection.".

["(b) CHAPTER 32 PROGRAM.—(1) Section 1631(a) of such title is amended by adding at the end the following new paragraph:

["(5)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph—

["(i) shall not be charged against the entitlement of any eligible veteran under this chapter; and

["(ii) shall not be counted toward the aggregate period for which section 1795 of this title limits an individual's receipt of assistance.

["(B) The payment of an educational assistance allowance referred to in subparagraph (A) of this paragraph is any payment of a monthly benefit under this chapter to an eligible veteran for pursuit of a course or courses under this chapter if the Secretary finds that the eligible veteran—

["(i) in the case of a member of the Selected Reserve, had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, 673b of title 10; or

["(ii) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with such War, to a new duty location or assignment or to perform an increased amount of work; and

["(iii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) or (ii) of this subparagraph, his or her course pursuit.

["(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(iii) of this paragraph.

["(D) The amount in the fund for each eligible veteran who received a payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall be restored to the amount that would have been in the fund for the veteran if the payment had not been made. For purposes of carrying out the previous sentence, the Secretary of Defense shall deposit into the fund, on behalf of each such veteran, an amount equal to the entire amount of the payment made to the veteran.

["(E) In the case of a veteran who discontinues pursuit of a course or courses as described in subparagraph (B) of this paragraph, the formula for ascertaining the amount of the monthly payment to which the veteran is entitled in paragraph (2) of this subsection shall be implemented as if—

["(i) the payment made to the fund by the Secretary of Defense under subparagraph (D) of this paragraph, and

["(ii) any payment for a course or courses described in subparagraph (B) of this paragraph that was paid out of the fund.

had not been made or paid.".

[(2) Section 1631(a)(2) of such title is amended by inserting "in paragraph (5)(E) of this subsection and" after "Except as provided".

[(c) CHAPTER 35 PROGRAM.—Section 1711(a) of such title is amended—

[(1) by striking out "Each" and inserting in lieu thereof "(1) Each"; and

[(2) by adding at the end the following new paragraph:

["(2)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

["(i) be charged against the entitlement of any individual under this chapter; or

["(ii) be counted toward the aggregate period for which section 1795 of this title limits an individual's receipt of assistance.

["(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

["(i) had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, 673b of title 10; and

["(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) of this subparagraph, his or her course pursuit.

["(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii) of this paragraph.".

[(d) SELECTED RESERVE PROGRAM—Section 2131(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

["(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance alowance described in subparagraph (B) of this paragraph shall not—

["(i) be charged against the entitlement of any individual under this chapter; of

["(ii) be counted toward the aggregate period for which section 1795 of title 38 limits an individual's receipt of assistance.

["(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

["(i) had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, or 673b of this title; and

["(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) of this subparagraph, his or her course pursuit.

["(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii) of this paragraph.".

[SEC. 2. DELIMITING DATE.

[Section 2133(b) of title 10, United States Code, is amended by adding at the end the following:

["(4)(A) In the case of a member of the Selected Reserve of the Ready Reserve who, during the Persian Gulf War, serves on active duty pursuant to an order to active duty issued under section 672 (a), (d), or (g), 673, or 673b of this title—

["(i) the period of such active duty service shall not be considered in determining the expiration date applicable to such member under subsection (a); and

[(ii) the member may not be considered to have been separated from the Selected Reserve for the purposes of cause (2) of such subsection by reason of the commencement of such active duty service.

["(B) For the purposes of this paragraph, the term 'Persian Gulf War' shall have the meaning given such term in section 101(33) of title 38.".]

and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Educational Assistance Amendments of 1991".

SEC. 2. RESTORATION OF ENTITLEMENT TO EDUCATIONAL ASSISTANCE.

(a) CHAPTER 30 PROGRAM.—Section 1413 of title 38, United States Code, is amended by adding at the end the following new subsection:

"(f)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in paragraph (2) shall not—

"(A) be charged against any entitlement of any individual under this chapter; or

"(B) be counted toward the aggregate period for which section 1795 of this title limits an individual's receipt of assistance.

"(2) Subject to paragraph (3), the payment of the educational assistance allowance referred to in paragraph (1) is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

"(A) in the case of a person not serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672 (a), (d), or (g), 673, 673b, or 688 of title 10; or

"(B) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with such War, to a new duty location or assignment or to perform an increased amount of work; and

"(C) failed to receive credit or lost training time toward completion of the individual's approved education, professional, or vocational objective as a result of having to discontinue, as described in subparagraph (A) or (B), his or her course pursuit.

"(3) The period for which, by reason of this subsection, and educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determine under paragraph (2)(C) of this subsection.".

(b) CHAPTER 32 PROGRAM.—(1) Section 1631(a) of such title is amended by adding at the end of the following new paragraph:

"(5)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an education assistance allowance described in subparagraph (B) of this paragraph—

"(i) shall not be charged against the entitlement of any eligible veteran under this chapter; and

"(ii) shall not be counted toward the aggregate period for which section 1795 of this title limits an individual's receipt of assistance.

"(B) The payment of an educational assistance allowance referred to in subparagraph (A) of this paragraph is any payment of a monthly benefit under this chapter to an eligible veteran for pursuit of a course or courses under this chapter if the Secretary finds that the eligible veteran—

"(i) in the case of a person not serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672(a), (d), or (g), 673, 673b, or 688 of title 10; or

"(ii) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with such War, to a new duty location or assignment or to perform an increased amount of work; and

"(iii) failed to receive credit or training time toward completion of the individual' approval education, professional, or vocational objective as a result of having to discontinue, as described in clause (i) or (ii) of this subparagraph, his or her course pursuit.

"(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to re-

ceive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(iii) of this paragraph.

"(D) The amounts in the fund for each eligible veteran who received a payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall be restored to the amount that would have been in the fund for the veteran if the payment had not been made. For purposes of carrying out the previous sentence, the Secretary of Defense shall deposit into the fund, on behalf of each such veteran, an amount equal to the entire amount of the payment made to the veteran.

"(E) In the case of a veteran who discontinues pursuit of a course or courses as described in subparagraph (B) of this paragraph, the formula for ascertaining the amount of the monthly payment to which the veteran is entitled in paragraph (2) of this subsection shall be implemented as if—

"(i) the payment made to the fund by the Secretary of Defense under subparagraph (d) of this paragraph, and

"(ii) any payment for a course or courses described in subparagraph (B) of this paragraph that was paid out of the fund,

had not been made or paid.".

(2) Section 1631(a)(2) of such title is amended by inserting "in paragraph (5)(E) of this subsection and" after "Except as provided".

(c) CHAPTER 35 PROGRAM.—Section 1711(a) of such title is amended—

(1) by striking out "Each" and inserting in lieu thereof "(1) Each"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

"(i) be charged against the entitlement of any individual under this chapter; or

"(ii) be counted toward the aggregate period for which section 1795 of this title limits an individual's receipt of assistance.

"(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

"(i) had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672(a), (d), or (g), 673, 673b, or 688 of title 10; and

"(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) of this subparagraph, his or her course pursuit.

"(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of this title shall not exceed the portion of the period of enrollment in the course or course for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii) of this paragraph.".

(d) SELECTED RESERVE PROGRAM.—Section 2131(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

"(i) be charged against the entitlement of any individual under this chapter; or

"(ii) be counted toward the aggregate period for which section 1794 of title 38 limits an individual's receipt of assistance.

"(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

"(i) had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672(a), (d), or (g), 673, or 673b of this title; and

"(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) of this subparagraph, his or her course pursuit.

"(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii) of this paragraph.".

SEC. 3. DELIMITING DATE.

Section 2133(b) of title 10, United States Code, is amended by adding at the end the following:

"(4)(A) In the case of a member of the Selected Reserve of the Ready Reserve who, during the Persian Gulf War, serves on active duty pursuant to an order to active duty issued under section 672(a), (d), or (g), 673, or 673b of this title—

"(i) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

"(ii) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active duty service.

"(B) For the purposes of this paragraph, the term 'Persian Gulf War' shall have the meaning given such term in section 101(33) of title 38.".

SEC. 4. CLARIFICATION OF ELIGIBILITY FOR EMPLOYMENT AND TRAINING ASSISTANCE.

Section 2014(b)(2)(A)(i) of title 38, United States Code, is amended by striking out "has a service-connected disability" and inserting in lieu thereof "is entitled to disability compensation under the laws administered by the Secretary or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty.".

SEC. 5. ELIGIBILITY OF MEMBERS OF A RESERVE COMPONENT FOR EMPLOYMENT AND TRAINING ASSISTANCE.

Section 2011(4) of title 38, United States Code, is amended to read as follows:

"(4) The term 'eligible veteran' means a person who—

"(A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;

"(B) was discharged or released from active duty because of a service-connected disability; or

"(C) as a member of a reserve component under an order to active duty pursuant to section 672 (a), (d), or (g), 673, or 673b of title 10, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge.".

Amend the title so as to read:

To amend title 10, United States Code, and title 38, United States Code, to improve the educational assistance benefits for members of the reserve components of the Armed Forces who served on active duty during the Persian Gulf War, to improve and clarify the eligibility of certain veterans for employment and training assistance, and for other purposes.

INTRODUCTION

On April 8, 1991, S. 868 was introduced by the Chairman of the Committee, Senator Alan Cranston. As introduced, S. 868 would have (1) restored educational assistance entitlement to servicemembers and reservists who were unable to complete their coursework due to service in connection with the Persian Gulf War (the period beginning on August 2, 1990, and ending on a data specified by the President or by statute), and (2) protected reservists who were called to active duty during that conflict from losing any time in which to use their benefits by extending the delimiting date for reservists' educational entitlement.

S. 868 was derived from two Persian Gulf veterans education benefits bills—H.R. 1108, as introduced on February 25, and in part, from S. 490, as introduced by Senator Boren on February 26.

Similar provisions were included in the Persian Gulf servicemembers and veterans benefits legislation—H.R. 1175, as passed by the House on March 14, and S. 578, as part of the Senate leadership amendment passed by the Senate on March 14 as an amendment to H.R. 1175—but those provisions were not included in S. 725 as enacted in Public Law 102-25 on April 6, 1991.

On May 23, 1991, the Committee held a hearing, chaired by Senator Cranston, to receive testimony on legislation relating to, among other matters, S. 868. Testimony on the bill was received from D'Wayne Gray, Chief Benefits Director, Department of Veterans Affairs, and representatives of The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, AMVETS, and the Paralyzed Veterans of America. Testimony was also submitted for the record of the hearing by the Vietnam Veterans of America, the Enlisted Association of the National Guard, the American Association of State Colleges and Universities, the Reserve Officers Association of the United States, the Naval Reserve Association, the National Guard Association of the United States, the Non Commissioned Officers Association of the United States of America, the Association of the United States Army, the National Association of Veterans Program Administrators, and the National Association of State Approving Agencies.

COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearing, the Committee met in open session on June 6, 1991, and voted by a unanimous rollcall vote to report S. 868 with an amendment in the nature of a substitute.

SUMMARY OF S. 868 AS REPORTED

S. 868 as reported (hereinafter referred to as the "Committee bill") contains amendments to chapter 30, 32, 35, and 42 of title 38, United States Code, and chapter 106 of title 10 that would:

1. Restore educational assistance entitlement to participants in VA-administered programs who had received benefits for the pursuant of courses which they were unable to complete because either they were members of a reserve component who were called to active duty or, in the case of active-duty servicemen, they were assigned duties that prevented them from completing their courses. (Section 2.)

2. In the case of a member of a reserve component who was called to active duty during the Persian Gulf War (a) extend the period during which the reservists may use his or her Montgomery GI Bill benefits under chapter 106 of title 10 by a period equal to the length of their active service plus 4 months, and (b) provide that the reservist is not to be considered to have been separated from the Selected Reserve for education benefit purposes by reason of their active-duty service. (Section 3.)

3. Clarify that Vietnam-era veterans' eligibility for veterans readjustment appointments in Federal employment based on having a service-connected disability is limited to veterans who are entitled to disability compensation or who were discharged or released

from active duty for a disability incurred or aggravated in line of duty. (Section 4.)

4. Extend eligibility from employment-assistance services under chapter 42 of title 38 to include an activated member of a reserve component with less than 180 days of active-duty service if he or she served on active duty during a period of war or was awarded a campaign badge. (Section 5.)

DISCUSSION

RESTORATION OF ENTITLEMENT TO EDUCATIONAL ASSISTANCE

Chapters 30, 32, and 35 of title 38, United States Code, and chapter 106 of title 10 provide for educational assistance programs for eligible active-duty servicemembers,survivors, dependents, and reservists. Under these programs, participants are entitled to a set number of monthly educational assistance payments for full-time study.

Many active-duty servicemembers and reservists participating in these programs had to leave school in order to serve in the Persian Gulf or in support of military operations there. This meant that they used months of entitlement of VA benefits for periods that will not be counted toward a degree, certificate, or other educational or training goal.

Section 2 of the Committee bill would, in the cases of those who had received payment of VA-administered educational benefits but were unable to complete their courses as a result of a change in their duties, or of their activation, in connection with the Persian Gulf War, restore to them the months of entitlement they used for the interrupted course. Thus, upon returning to school, these individuals would be able to resume their educational pursuit with the amount of entitlement that they had before entering the period of schooling that they had been unable to finish.

Cost: CBO estimates that the enactment of section 2 would entail no significant costs in FYs 1991–1994 and 1996 and $10 million in both budget authority and outlays in FY 1995.

DELIMITING DATE

Under section 2133 of title 10, reservists participating in the educational assistance program under chapter 106 of title 10 may use their educational benefits until the end of the 10-year period following their attaining eligibility or until they are separated from the Selected Reserve, whichever occurs first.

Section 3 of the Committee bill is designed to ensure that reservists do not have any less time in which to use their benefits by reason of their active-duty service in connection with the Persian Gulf War. Thus, this provision would provide both that (1) the period of active duty plus 4 months would not count as part of the 10-year period, and (2) for education benefit purposes, the individual would not be considered to have been separated from the Selected Reserve.

As noted by the National Association of Veterans Program Administrators in testimony submitted for the May hearing, the number of months that an individual serves on active duty is not

always equal to the amount of educational opportunity lost. For example, an individual released from active duty during a school term will usually have to wait until the next term begins in order to resume coursework. As it would be difficult administratively to determine the amount of lost opportunity in each case, this provision would provide for an additional 4 months of education entitlement in all cases in which a reservist or National Guard member was ordered to active duty in connection with the Persian Gulf War.

The Committee does not expect the administration of this section to be burdensome and expects the Departments of Defense and Veterans Affairs to develop an efficient system for recomputing eligibility periods.

Cost: CBO estimates that enactment of section 3 would entail no significant cost.

CLARIFICATION OF ELIGIBILITY FOR EMPLOYMENT AND TRAINING ASSISTANCE

The Veterans' Readjustment Appointment (VRA) authority, which was established in 1970 by Executive Order 11521 and has been revised and codified in section 2014 of title 38, provides authority for certain veterans to receive excepted (i.e., noncompetitive) appointments in the Federal civil service within certain grade limitations. Section 2014 has been amended twice in recent years—first, in 1989, by section 407 of the Veterans' Benefits Amendments of 1989, Public Law 101-237, and then earlier this year, by section 9 of the Veterans' Education and Employment Programs Amendments, Public Law 102-16. Prior to the enactment of Public Law 101-237, Vietnam-era veterans were generally eligible to receive an excepted appointment under the VRA authority if they (1) met certain education limitations or (2) if they either had a compensable service-connected disability, that is, one rated by VA as 10 percent or more disabling, or had been released or discharged from active duty for a disability incurred or aggravated in line of duty. That law modified the eligibility criteria to limit such appointments for Vietnam-era veterans to those who received a campaign badge for service during the era or had a service-connected disability.

Under this new definition, general eligibility was extended unintentionally to Vietnam-era veterans with service-connected disabilities who do not have compensable disabilities.

Section 4 of the Committee bill would further limit the eligible category by specifying that those Vietnam-era veterans eligible for an excepted appointment under the VRA authority on the basis of having a service-connected disability would have to have a compensable disability.

Cost: CBO estimates that enactment of section 4 would entail no significant cost.

ELIGIBILITY OF MEMBERS OF A RESERVE COMPONENT FOR EMPLOYMENT AND TRAINING ASSISTANCE

Sections 2001(4) and 2011(4) of title 38 define the term "eligible veteran" for purposes of employment and job-training services under chapters 41 and 42 of title 38 as an individual who (1) served

on active duty for a period of more than 180 days and was discharged or released with an other than dishonorable discharge, or (2) was discharged or released from active duty because of a service-connected disability. The assistance for which a veteran may be eligible under these chapters includes the employment and job-training services provided by disabled veterans' outreach specialists and local veterans' employment representatives, employment emphasis under Federal contracts, special eligibility requirements under Federal employment and training programs, and excepted appointments in the Federal civil service.

Under current law, reservists who are called up for extended periods of active service of less than 181 days are not eligible for services under these chapters even if they are sent overseas to a combat theater of operations, as in the case of the Persian Gulf War.

The Armed Forces rely on reservists to provide essential skills in times of conflict. The Committee recognizes that reservists often must interrupt civilian careers to serve on active duty and that some reservists could benefit from employment assistance following active-duty service. Thus, section 5 of the Committee bill would extend eligibility for such assistance to members of the Selected Reserve who serve on active duty during a period of war, or in a campaign or expedition for which a campaign badge is authorized, and are discharged or released under other than dishonorable conditions.

Cost: CBO estimates that enactment of section 5 would entail no significant cost.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs resulting from the enactment of the Committee bill (as compared to costs under current law), as scored against the current CBO baseline during the remainder of FY 1991 and for the first 5 years following enactment would not affect the Federal budget in FYs 1991-1994 and 1996 but would increase the Federal budget by $10 million in FY 1995. The cost estimate provided by CBO, setting forth a detailed breakdown of the costs follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 12, 1991.

Hon. ALAN CRANSTON,
Chairman, Committee on Veterans' Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 868, as ordered reported by the Senate Committee on Veterans' Affairs on June 6, 1991. CBO estimates that enactment of S. 868 would not affect the federal budget in fiscal years 1991 to 1994 and 1996 but would increase the federal budget by $10 million in fiscal year 1995. This bill would not affect the budgets of state and local governments.

This legislation would restore lost educational assistance benefits to reservists whose training was disrupted by a call-up in connection with the Persian Gulf War. Because very few of the affected individuals could exhaust their existing entitlement in the next four years, the cost of this provision is expected to be insignificant before 1995. An increase in outlays of $10 million is estimated for 1995, and an additional $40 million in costs would be incurred after 1996.

This provision would restore educational assistance benefits to reservists training under several different educational benefit programs. All of the programs allow beneficiaries to use their entitlement—36 months of education benefits—over a 10-year period, although, on average, beneficiaries exhaust their entitlement within 8 years. One of the programs begins counting the 10-year period when they enlist. This estimate assumes the beneficiaries of that program are halfway through their entitlement and would exhaust their entitlement in fiscal year 1995. The remaining beneficiaries began training in 1989 under the chapter 30 program. Therefore, they would not exhaust their entitlement prior to 1997, when the additional months would be restored.

Also, S. 868 would not consider active duty service in connection with the Persian Gulf War plus 4 months as part of the 10-year period reservists have to use their educational assistance benefits. Because this provision simply shifts but does not lengthen the time period for using education benefits, CBO estimates this provision would not result in additional training by reservists and therefore would not affect the federal budget.

In addition, S. 868 would amend the veterans readjustment appointment program. This program gives preference to veterans in federal hiring. Currently, any veteran of the Vietnam era who has a service-connected disability is eligible for a veterans readjustment appointment. This bill would limit eligibility to veterans who are entitled to disability compensation or whose discharge from active duty was for a disability incurred in the line of duty.

Further, a veteran would be eligible to receive a readjustment appointment as a member of the selected reserve if they served on active duty during a period of war or in a campaign for which a campaign badge has been authorized without having to meet the minimum active duty requirement of 180 days. This amendment would not affect the federal budget because it would not affect total federal employment.

Pay-As-You-Go Considerations.—Section 252 of the Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. The estimated increase to outlays in 1995 of $10 million represents direct spending and would be subject to pay-as-you-go procedures.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Cory Oltman.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Regulatory Impact Statement

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any significant regulation of any individuals or businesses or result in any significant impact on the personal privacy of any individuals and that the paperwork resulting from enactment would be minimal.

Tabulation of Votes Cast in Committee

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members on the Committee on Veterans' Affairs at a June 6, 1991, meeting. On that date, the Committee voted by a rollcall vote to report S. 868 favorably to the Senate with an amendment in the nature of a substitute. The vote was 10–0 as follows:

YEAS (10)	NAYS (0)
Alan Cranston	
George J. Mitchell	
John D. Rockefeller IV	
Bob Graham	
Daniel K. Akaka	
Thomas A. Daschle	
Arlen Specter	
Frank H. Murkowski	
Strom Thurmond	
James M. Jeffords	

Agency Reports

On June 25, 1991, the Committee Chairman asked the Secretary of Veterans Affairs for a report setting forth the Department's views on S. 868. As of the date of the filing of this report, a report on the Department's views had not been received. However, on May 23, 1991, Chief Benefits Director D'Wayne Gray submitted testimony on S. 868 as introduced, and the testimony is reprinted below in lieu of the Department's report on this bill:

Statement of D'Wayne Gray, Chief Benefits Director, Department of Veterans Affairs

Mr. Chairman and members of the Committee:

Thank you for the opportunity to appear before the Committee to provide the views of the Department of Veterans Affairs (VA) on S. 868, legislation that you, Mr. Chairman, recently introduced to restore certain education benefits lost by members of the Armed Forces as a result of their active duty service during the Persian Gulf War. I am also pleased to relate, as requested, the Department's experience as an employer in implementing the veterans' reemployment rights provisions of chapter 43 of title 38

pertinent to reservists and National Guard members who served in connection with the Persian Gulf War.

Mr. Chairman, it is unquestionably fitting that we provide the relief accorded by S. 868, as described below, so that no person who served on active duty during the Persian Gulf War loses, by reason of such service, any measure of the educational opportunity intended to be afforded by the educational benefits to which such person had established entitlement. Consequently, to the extent it affects benefits programs within our jurisdiction, we would support this measure.

However, Mr. Chairman, S. 868 would increase direct spending; therefore, it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990 (OBRA). No offsets to the direct spending increases are provided in the bill. Although the Administration supports the substantive provisions of S. 868, I must note that such support is contingent upon the inclusion of offsets to the increases to direct spending contained in the bill as required by OBRA. The Office of Management and Budget's preliminary scoring estimates of this bill are $13 million for Fiscal Year 1995.

Section 1 of S. 868 provides for restoration of certain education benefit entitlement. It would amend chapters 30, 32, and 35 of title 38 and chapter 106 of title 10 to provide that any payment of educational assistance under those chapters to a member of the Selected Reserve would not be charged against the reservist's entitlement if he or she had to discontinue pursuit of education or training because of being ordered to active duty under section 672(a), (d), or (g), 673, or 673b of title 10 in connection with the Persian Gulf War. The provision would apply only to course pursuit for which the individual did not receive credit or lost training time toward completion of the approved educational, professional, or vocational objective.

The same section also would restore entitlement for members of the Armed Forces who had to discontinue course pursuit while on active duty as a result of being ordered, in connection with such War, to a new duty location or assignment or to perform an increased amount of work.

In addition, to effect the restoration of entitlement with respect to the chapter 32 contributory GI Bill (VEAP), the Department of Defense would restore, by deposit to the VEAP Fund on behalf of the participant, an amount equal to the entire amount of the payment made to the participant for the uncompleted course.

As previously indicated, we support the concept of this restoration. Among the sacrifices made by our young men and women in the Armed Forces who served on active duty during the Persian Gulf hostilities was the disruption to their educational pursuit. Clearly, it would be neither fair nor prudent for the Government to allow such a disruption to cause a forfeiture of any portion of an individual's earned education benefits. Thus, except to the extent

applicable to the chapter 32 and chapter 106 programs, on which we defer to the views of the Defense Department, we favor the enactment of this provision.

Section 2 of S. 868 amends title 10 to provide that a reservist called to active duty under section 672(a), (d) or (g), 673 or 673b of that title in connection with the Persian Gulf War would have that period of active duty excluded from his or her 10-year delimiting date. Further, such service would not be considered a separation from the Selected Reserve for delimiting date determination purposes.

Chapter 106 currently provides that educational assistance must be used within 10 years of the date on which the individual first became entitled or the date of separation from the Selected Reserve, whichever first occurs. Thus, the proposed amendment would replace the time lost from educational pursuit so as not to penalize the reservist who responded to the Country's call to active service as a result of Desert Shield/Storm operations.

VA fully supports the Defense Department's position that the period of an eligible Selected Reservist's active duty in connection with the Persian Gulf War should be excluded from his or her 10-year delimiting date under the chapter 106 Montgomery GI Bill program if necessary to insure the reservist's education benefits are not adversely affected by such service.

Mr. Chairman, before turning to VA's experience as an employer of reservists and National Guard members, I would first like to tell you how proud we in VA are of all of our employees who serve in the Armed Forces Reserves and with National Guard units. More than 3,500 VA employees were called to active duty in connection with the Persian Gulf War and thus far almost half have returned to their positions.

VA's experience with restoring employees to our employment rolls after their discharge from active duty military service has been very positive. They return to their civilian positions with renewed confidence and a desire to undertake more challenging tasks. Generally, employees going on active duty for 1 year or longer are separated from the Department and advised of their restoration rights. It is our policy to strive to restore returning employees whenever possible to the same positions in the facility where they last worked prioir to their call to military service. If this is not possible, we place them in a position of comparable salary and status for which they are qualified.

In all wars there are casualties, and some VA employees do receive injuries. In the event that an employee applies for restoration but is no longer physically able to perform all of the duties of the position, we are committed to restoring that employee to the best available position for which he or she is qualified.

VA supports employee participation in the Armed Forces Reserves and National Guard units and lives up to

the requirements of chapter 43 of title 38 of the United States Code. I encourage all employers, both private and public sector, to permit their employees to continue to serve their Country through service in the Armed Forces Reserves or the National Guard.

Mr. Chairman, this concludes my testimony. I will be pleased to respond to any questions you or the members of the Committee may have.

CHANGES IN EXISTING LAW MADE BY S. 868 AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 10—UNITED STATES CODE

* * * * * * *

Subtitle A—General Military Law

* * * * * * *

PART III—TRAINING AND EDUCATION

* * * * * * *

CHAPTER 106—EDUCATIONAL ASSISTANCE FOR MEMBERS OF THE SELECTED RESERVE

* * * * * * *

§ 2131. Educational assistance program: establishment, amount

(a)* * *

* * * * * * *

(c)(1)* * *

* * * * * * *

(3)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 1795 of title 38 limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672(a), (d), or (g), 673, or 673b of this title; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) of this subparagraph, his or her course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii) of this paragraph.

* * * * * * *

§ 2133. Time limitation for use of entitlement

(a) * * *
(b)(1) * * *

* * * * * * *

(4)(A) In the case of a member of the Selected Reserve of the Ready Reserve who, during the Persian Gulf War, serves on active duty pursuant to an order to active duty issued under section 672(a), (d), or (g), 673, or 673b of this title—

(i) the period of such active duty service plus four months shall not be considered in determining the expiration date applicable to such member under subsection (a); and

(ii) the member may not be considered to have been separated from the Selected Reserve for the purposes of clause (2) of such subsection by reason of the commencement of such active duty service.

(B) For the purposes of this paragraph, the term "Persian Gulf War" shall have the meaning given such term in section 101(33) of title 38.

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TITLE 38—UNITED STATES CODE

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PART III—READJUSTMENT AND RELATED BENEFITS

* * * * * * *

CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

* * * * * * *

Subchapter II—Basic Educational Assistance

* * * * * * *

§ 1413. Duration of basic educational assistance

(a)(1) * * *

* * * * *

(f)(1) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in paragraph (2) shall not—

(A) be charged against any entitlement of any individual under this chapter, or

(B) be counted toward the aggregate period for which section 1795 of this title limits an individual's receipt of assistance.

(2) Subject to paragraph (3), the payment of the educational assistance allowance referred to in paragraph (1) is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

(A) in the case of a person not serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672(a), (d), or (g), 673, 673b, or 688 of title 10; or

(B) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with such War, to a new duty location or assignment or to perform an increased amount of work; and

(C) failed to receive credit or lost training time toward completion of the individual's approved education, professional, or vocational objective as a result of having to discontinue, as described in subparagraph (A) or (B), his or her course pursuit.

(3) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under paragraph (2)(C) of this subsection.

* * * * * * *

CHAPTER 32—POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE

* * * * * * *

Subchapter III—Entitlement; Duration

§ 1631. Entitlement; loan eligibility

(a)(1) * * *

(2) Except as provided *in paragraph (5)(E) of this subsection and* in subsection (f) of this section and section 1633 of this title and subject to section 1641 of this title, the amount of the monthly payment to which any eligible veteran is entitled shall be ascertained by (A) adding all contributions made to the fund by the eligible veteran, (B) multiplying the sum by 3, (C) adding all contributions

made to the fund for such veteran by the Secretary of Defense, and (D) dividing the sum by the lesser of 36 or the number of months in which contributions were made by such veteran.

* * * * * * *

(5)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph—

(i) shall not be charged against the entitlement of any eligible veteran under this chapter; and

(ii) shall not be counted toward the aggregate period for which section 1795 of this title limits an individual's receipt of assistance.

(B) The payment of an educational assistance allowance referred to in subparagraph (A) of this paragraph is any payment of a monthly benefit under this chapter to an eligible veteran for pursuit of a course or courses under this chapter if the Secretary finds that the eligible veteran—

(i) in the case of a person not serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672(a), (d), or (g), 673, 673b, or 688 of title 10; or

(ii) in the case of a person serving on active duty, had to discontinue such course pursuit as a result of being ordered, in connection with such War, to a new duty location or assignment or to perform an increased amount of work; and

(iii) failed to received credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) or (ii) of this subparagraph, his or her course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii) of this paragraph.

(D) The amount in the fund for each eligible veteran who received a payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall be restored to the amount that would have been in the fund for the veteran if the payment had not been made. For purposes of carrying out the previous sentence, the Secretary of Defense shall deposit into the fund, on behalf of each such veteran, an amount equal to the entire amount of the payment made to the veteran.

(E) In the case of a veteran who discontinues pursuit of a course or courses as described in subparagraph (B) of this paragraph, the formula for ascertaining the amount of the monthly payment to which the veteran is entitled in paragraph (2) of this subsection shall be implemented as if—

(i) the payment made to the fund by the Secretary of Defense under subparagraph (D) of this paragraph, and

(ii) any payment for a course or courses described in subparagraph (B) of this paragraph that was paid out of the fund, had not been made or paid.

* * * * * * *

CHAPTER 35—SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

* * * * * * *

Subchapter II—Eligibility and Entitlement

* * * * * * *

§ 1711. Duration of educational assistance

(a)*(1)* Each eligible person shall be entitled to educational assistance under this chapter for a period not in excess of 45 months (or to the equivalent thereof in part-time training).

(2)(A) Notwithstanding any other provision of this chapter or chapter 36 of this title, any payment of an educational assistance allowance described in subparagraph (B) of this paragraph shall not—

(i) be charged against the entitlement of any individual under this chapter; or

(ii) be counted toward the aggregate period for which section 1795 of this title limits an individual's receipt of assistance.

(B) The payment of the educational assistance allowance referred to in subparagraph (A) of this paragraph is the payment of such an allowance to an individual for pursuit of a course or courses under this chapter if the Secretary finds that the individual—

(i) had to discontinue such course pursuit as a result of being ordered, in connection with the Persian Gulf War, to serve on active duty under section 672(a), (d), or (g), 673, 673b, or 688 of title 10; and

(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i) of this subparagraph, his or her course pursuit.

(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 1795 of this title shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or will respect to which the individual lost training time, as determined under subparagraph (B)(ii) of this paragraph.

* * * * * * *

CHAPTER 42—EMPLOYMENT AND TRAINING OF VETERANS

* * * * * * *

§ 2011. Definitions

As used in this chapter—

(1) * * *

* * * * * * *

(4) The term "eligible veteran" means a person [who (A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (B) was discharged or released from active duty because of a service-connected disability.] *who—*

(A) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;

(B) was discharged or released from active duty because of a service-connected disability; or

(C) as a member of a reserve component under an order to active duty pursuant to section 672(a), (d), or (g), 673, or 673b of title 10, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge.

* * * * * * *

§ 2014. Employment within the Federal Government

(a)(1) * * *

* * * * * * *

(b)(1) * * *

* * * * * * *

(2) This subsection applies to—

(A) a veteran of the Vietnam era who—

(i) [has a service-connected disability;] *is entitled to disability compensation under the laws administered by the Secretary or whose discharge or release from active duty was for a disability incurred or aggravated in line of duty;* or

(ii) during such era, served on active duty in the Armed Forces in a campaign or expedition for which a compaign badge has been authozied; and

(B) veterans who first became a member of the Armed Forces or first entered on active duty as a member of the Armed Forces after May 7, 1975, and were discharged or released from active duty under conditions other than dishonorable.

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